

F. Executive Order 13175, Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP EPA is disapproving would not apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This SIP disapproval under section 110 and subchapter I, part D of the CAA will not in-and-of itself create any new regulations but simply disapproves certain state requirements for inclusion into the SIP.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA, Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through the Office of Management and Budget, explanations when the Agency decides not to use available and applicable voluntary consensus standards. EPA believes that this action is not subject to requirements of Section 12(d) of NTTAA because application of those

requirements would be inconsistent with the CAA.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this proposed action. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the CAA. Accordingly, this action merely proposes to disapprove certain state requirements for inclusion into the SIP under section 110 and subchapter I, part D of the CAA and will not in-and-of itself create any new requirements. Accordingly, it does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898.

K. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 19, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: June 28, 2011.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart S—Kentucky

■ 2. Section 52.933 is amended by adding paragraph (c), to read as follows:

§ 52.933 Control strategy: Sulfur oxides and particulate matter.

* * * * *

(c) *Disapproval.* EPA is disapproving portions of Kentucky's Infrastructure SIP for the 2006 24-hour PM_{2.5} NAAQS addressing interstate transport, specifically with respect to section 110(a)(2)(D)(i)(I).

[FR Doc. 2011–17996 Filed 7–19–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2011–0279; FRL–9436–1]

Approval and Promulgation of Air Quality Implementation Plan; Kansas; Final Disapproval of Interstate Transport State Implementation Plan Revision for the 2006 24-hour PM_{2.5} NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to our authority under the Clean Air Act (CAA or Act), the Environmental Protection Agency (EPA) is taking final action to disapprove the portion of the “Infrastructure” State Implementation Plan (SIP) submittal from the State of Kansas intended to address the CAA section relating to the “interstate transport” requirements for the 2006 24-hour fine particle (PM_{2.5}) National Ambient Air Quality Standards (NAAQS) that prohibit a state from significantly contributing to nonattainment or interfering with maintenance of the NAAQS in any other state. This final action to disapprove the “interstate transport” portion of the Kansas SIP submittal, received by EPA on April 12, 2010, only relates to those provisions and does not address the other portions of Kansas' April 12, 2010, submission. The rationale for this action and additional detail on this disapproval was described in EPA's proposed rulemaking published in the **Federal Register** on the March 18, 2011. The effect of this action will be the

promulgation of a Federal Implementation Plan (FIP) for Kansas no later than two years from the date of disapproval. The proposed Transport Rule, when final, is the FIP that EPA intends to implement for Kansas.

DATES: *Effective Date:* This rule is effective on August 19, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R07-OAR-2011-0279. All documents in the docket are listed on the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the U.S. Environmental Protection Agency, Region 7, in the Air Planning and Development Branch of the Air and Waste Management Division, 901 North 5th Street, Kansas City, Kansas 66101. EPA requests that, if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance. The Regional Office official hours of business are Monday through Friday, 8 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Kramer, Environmental Scientist, Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101; *telephone number:* (913) 551-7186; *fax number:* (913) 551-7844; *e-mail address:* kramer.elizabeth@epa.gov.

Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 19, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to

enforce its requirements. (See section 307(b)(2).)

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA. These sections provide additional information on this final action:

- I. Background
- II. EPA’s Responses to Comments on the Proposal
- III. Final Action
- IV. Administrative Requirements

I. Background

On March 18, 2011 (76 FR 14831–14835), EPA proposed to disapprove a portion of the “Infrastructure” SIP (CAA 110(a)(1) and (2)) submittal from the State of Kansas relating to the interstate transport element of infrastructure (CAA section 110(a)(2)(D)(i)(I)). For additional detail on this final action, see the proposed rulemaking.

Section 110(a)(2) of the CAA lists the thirteen required elements that “infrastructure” SIPs must address, as applicable, including section 110(a)(2)(D)(i), which pertains to interstate transport of certain emissions. These “good neighbor” provisions require each state to submit a SIP that prohibits emissions which adversely affect another state in the ways contemplated in the statute. The section 110(a)(2)(D)(i), portion of Kansas’ SIP must prevent sources in the State from emitting pollutants in amounts which will: (I) Contribute significantly to nonattainment of the NAAQS in other states and interfere with maintenance of the NAAQS in other states and (II) interfere with provisions to prevent significant deterioration of air quality in other states or interfere with efforts to protect visibility in other states.

On April 12, 2010, EPA received a SIP revision from the State of Kansas intended to address the requirements of section 110(a)(2) including the requirements of section 110(a)(2)(D)(i) for the 2006 24-hour PM_{2.5} NAAQS. In this final rulemaking, EPA is disapproving only the 110(a)(2)(D)(i)(I) portion of the submittal that pertains to prohibiting sources in Kansas from emitting pollutants that significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour PM_{2.5} NAAQS in other states. The elements on which we are taking action today are severable portions of the submittal. EPA plans to act on the additional portions of the State’s submittal in a subsequent action.

The requirements of section 110(a)(2)(D)(i)(I), as well as EPA’s analysis of the State’s submission, are explained in detail in the proposal. The

reader should refer to the proposal for further explanation of EPA’s rationale for the proposed disapproval.

II. EPA’s Responses to Comments on the Proposal

Overview of Comments

Formal comments were received from commenters on behalf of two utility companies in Kansas (the Kansas City Board of Public Utilities and Westar Energy) regarding EPA’s March 18, 2011 proposed disapproval (76 FR 14831). The commenters submitted identical comments regarding EPA’s proposed rulemaking. EPA has summarized the comments and responded to each within this section of this final rulemaking.

1. *Comment:* The commenters argued that EPA’s proposed disapproval action did not clearly describe how the State lacked a technical demonstration showing that Kansas sources did not significantly contribute to nonattainment or interfere with maintenance of the 2006 PM_{2.5} NAAQS. The commenters stated that the State’s demonstration consisted of the following: (1) Kansas met the demonstration requirement “by indicating that” its sources do not significantly interfere with attainment or maintenance in downwind states; and (2) Kansas supported this assertion by stating that Kansas sources had reduced PM_{2.5} precursor emissions (below 2005 National Emissions Inventory levels) by 32 percent for nitrogen oxides (NO_x) and 58 percent for sulfur oxides (SO_x), “suggesting the State’s emissions would not exceed” the 2006 PM_{2.5} NAAQS.

EPA Response: In the proposal, EPA stated two bases for its proposed disapproval: (1) Absence of a technical demonstration showing that Kansas sources do not significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour PM_{2.5} NAAQS; and (2) information in the preliminary modeling for EPA’s Transport Rule which conflicted with the State’s conclusory statement that Kansas sources did not significantly impact downwind nonattainment or interfere with maintenance. The mere “indication” that Kansas sources do not significantly contribute to downwind nonattainment or interfere with maintenance is not a demonstration, but rather an unsupported conclusion. A statement regarding decreases in PM_{2.5} precursor emissions compared to a 2005 inventory does not “suggest,” much less demonstrate, that the air quality impact of those emissions reductions on

downwind concentrations of PM_{2.5} are insignificant.

Kansas included the following information in its attempt to address 110(a)(2)(D)(i) requirements. The submittal described that Kansas has adopted, by reference, the Federal Prevention of Significant Deterioration regulations into the Kansas Air Regulations. In the submission, Kansas articulated its future intent to incorporate the new, 24-hour PM_{2.5} NAAQS into the State air regulations. Kansas also described its Regional Haze SIP to address visibility requirements, which is currently pending EPA review. In addition, the submittal included a summary of the emission reductions (in tons per year) of both NO_x and SO_x anticipated to be achieved from four of the electric generating units (EGUs) in Kansas. Kansas then described the percentage of emission reductions expected from those facilities compared to previous emissions recorded in the National Emissions Inventory from 2005. In the submittal, Kansas described certain projected emissions reductions from EGUs but did not submit any information on the impact of emissions either from the four units discussed in the submittal, or from other sources in the State of Kansas, on downwind nonattainment and maintenance of the 2006 24-hour PM_{2.5} NAAQS in other states. Kansas did not submit an analysis of emissions from Kansas sources on downwind areas. In addition, the Regional Haze SIP submission referenced in the infrastructure SIP submission does not contain such analysis. The submittal lacked the needed information and analysis to address the requirements of CAA section 110(a)(2)(D)(i)(I) to demonstrate that: (1) Kansas does not have a significant contribution on nonattainment of the NAAQS and interference with maintenance of the NAAQS in other states; or (2) that the State has adequate measures in place to eliminate any significant contribution to nonattainment of the NAAQS and interference with maintenance of the NAAQS in other states. There was no demonstration that the requirements of section 110(a)(2)(D)(i)(I) have been met with respect to the 2006 PM_{2.5} NAAQS.

2. *Comment:* The commenters argued that EPA's proposed disapproval action¹ improperly relied on the non-final, preliminary modeling performed for the proposed Transport Rule² (which

showed that emissions from the State of Kansas significantly contributed to nonattainment and interference with maintenance of the 2006 24-hour PM_{2.5} NAAQS in downwind areas). The commenters posit that, by relying on the modeling results of the proposed Transport Rule (completed after Kansas submitted its SIP), EPA had determined that the proposed Transport Rule modeling "superseded" Kansas' submittal, and that Kansas could receive approval of its SIP only if it had anticipated the subsequent modeling and had addressed the modeling in its SIP submittal.

EPA Response: In the proposed disapproval of the Kansas SIP, EPA neither stated nor implied that Kansas could only have avoided a disapproval by addressing the proposed Transport Rule modeling in its original submittal. As stated in response to comment 1 above, in the proposal EPA stated two bases for its proposed disapproval: (1) Absence of a technical demonstration showing that Kansas sources do not significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour PM_{2.5} NAAQS (discussed in detail in the response to comment 1, above); and (2) information in the preliminary modeling for the Transport Rule which conflicted with the State's conclusory statement that Kansas sources did not significantly impact downwind nonattainment or interfere with maintenance of the 2006 NAAQS. With respect to the latter basis, the modeling for the proposed Transport Rule was not available to Kansas when it submitted the SIP and could not have been considered by Kansas at that time. The proposed disapproval of the Kansas submittal was not based on the fact that Kansas did not address the proposed Transport Rule modeling. However, the modeling was relevant to EPA's proposed disapproval of the Kansas SIP, particularly in light of the fact that Kansas did not provide any technical demonstration at all regarding the interstate contribution issue, as discussed in the response to Comment 1. Commenters had the opportunity, and in fact did, comment on the applicability of the preliminary modeling to EPA's proposed action. EPA has now completed the modeling for the final Transport Rule and, as indicated by the technical support documents (TSDs) for this action, Kansas in fact significantly contributes to downwind nonattainment in another state and interferes with maintenance of the 2006 24-hour PM_{2.5} NAAQS in another state. Please see the TSDs for

the final modeling and contribution analysis as they relate to this action.

Nevertheless, the lack of any technical demonstration is sufficient basis to disapprove the SIP for this portion of the infrastructure element. However, as discussed in EPA's proposed disapproval, EPA also noted that we had preliminary information from the modeling performed for the proposed Transport Rule showing that Kansas sources significantly contribute to nonattainment and interfere with maintenance of the 2006 24-hour PM_{2.5} NAAQS in downwind areas.³ At proposal for this action, it was appropriate for EPA to consider technical information available for the proposed Transport Rule, particularly in light of the complete absence of any air quality analysis in the Kansas submittal regarding downwind impacts of Kansas sources. EPA did not determine, as suggested by the commenters, that the preliminary Transport Rule modeling "superseded" the Kansas submittal. The preliminary modeling merely provided an air quality impact analysis that the Kansas submittal lacked, and provided evidence that the mere assertion by Kansas of noncontribution was not only unsupported, but also incorrect. As noted above, the final modeling for the Transport Rule indicates that Kansas in fact significantly contributes to downwind nonattainment in another state and interferes with maintenance of the 2006 24-hour PM_{2.5} NAAQS in another state.

3. *Comment:* Based on language in EPA's 2009 Guidance document,⁴ commenters argued that EPA should have issued an incompleteness finding for the interstate transport (section 110(a)(2)(D)(i)(I)) portion of the submittal rather than issuing EPA's proposed disapproval action. The commenters argue that if EPA would have issued an incompleteness finding before the end of EPA's six month statutory time-frame for determining completeness, Kansas could have cured its incomplete SIP submittal by addressing the preliminary modeling for the Transport Rule in preparing the required technical demonstration to

³ See Section IV on Defining "Significant Contribution" and "Interference With Maintenance," 75 FR 45229 of "Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone; Proposed Rule," 75 FR 45210 (August 2, 2010).

⁴ See William T. Harnett, Director, Air Quality Policy Division, Office of Air Quality Planning and Standards. "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-hour Fine Particle (PM_{2.5}) National Ambient Air Quality Standards." Memorandum to EPA Air Division Directors, Regions I-X (September 25, 2009).

¹ See EPA's proposed disapproval on March 18, 2011 (76 FR 14831-14835).

² See "Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone; Proposed Rule," 75 FR 45210 (August 2, 2010).

address interstate transport requirements. The commenters further argue that, by choosing the disapproval option rather than the option of finding the submittal incomplete, the only remedial action is the FIP. Commenters assumed that EPA expected the State of Kansas to respond to the preliminary modeling of the proposed Transport Rule but that, as directed by the 2009 Guidance, Kansas was not allowed to wait until the preliminary Transport Rule modeling was issued to develop the SIP submittal.

EPA Response: EPA reiterates the explanation of its rationale for the disapproval described in response to Comments 1 and 2, above. In addition, the commenters' assertion that EPA put the State at an unfair disadvantage by not finding the submittal incomplete instead of issuing a proposed disapproval is incorrect. We note initially that the commenters' implicit conclusion that an incompleteness finding would not have triggered FIP obligations is not correct. Section 110(c)(1) of the CAA provides that the FIP obligation is triggered either upon disapproval of a SIP, or upon a determination that a state has failed to submit a SIP (or has submitted a SIP determined to be incomplete). In fact, an incompleteness finding would have triggered EPA's FIP obligation sooner than a final disapproval of the SIP. An incompleteness finding and a final disapproval each trigger a FIP clock. If EPA found the submittal to be incomplete, it would trigger a FIP obligation as of the date of the finding. Because such a finding is not subject to notice and comment rulemaking, while a disapproval requires such rulemaking, the FIP obligation would have been triggered much sooner.

Therefore, even if relevant to EPA's disapproval action, EPA did not create any unfair disadvantage for the State by its proposal to disapprove the submittal. Moreover, the State of Kansas did not submit any comments on the proposed rulemaking and did not submit any technical analysis in response to the proposed disapproval. The commenters speculate that, if EPA had determined the SIP was incomplete, Kansas would have submitted a supplement to its SIP submittal addressing the proposed Transport Rule modeling. The commenters imply that the proposed disapproval precluded Kansas from curing defects in the original submittal. However, in fact the proposed disapproval solicited comment on the proposed action, and did not foreclose Kansas from submitting the same information and analysis that the commenters argue would have been

submitted after an incompleteness finding. Neither the commenters nor Kansas submitted any analysis in response to the proposed disapproval which might be relevant to downwind impacts of Kansas sources on PM_{2.5} concentrations. Therefore, Kansas was not disadvantaged by the proposed disapproval as contrasted with the incompleteness finding option advocated by the commenters.

4. **Comment:** Commenters suggest that at the time of Kansas' submittal, Kansas' emissions had not "been deemed" by EPA to contribute to or interfere with downwind nonattainment or maintenance in other areas. The commenters assert that Kansas properly followed EPA's 2009 Guidance by "indicating" that "emissions from the State do not significantly interfere with attainment or maintenance of the 2006 24-hour PM_{2.5} NAAQS in downwind states." Furthermore, the commenters state that certain facts (such as NO_x and SO_x percent reductions over the values used in the preliminary Transport Rule modeling) demonstrate that Kansas submitted the required demonstration.

EPA Response: See also EPA's responses to Comment 1, 2 and 3 above. In addition, the CAA section 110(a)(2)(D)(i)(I) requires that states develop SIPs that demonstrate that a SIP is adequate to prohibit sources in the state from significantly contributing to downwind nonattainment or interference with maintenance of a new or revised NAAQS in another state. The CAA places responsibility on the State to show that this requirement is met. Neither the Act nor the 2009 Guidance referenced by the commenters indicate that this requirement can be met by merely concluding that EPA has not found any significant contribution or interference with maintenance. It is also not sufficient to merely "indicate" that there is no significant downwind contribution. In addition, as discussed in detail in the response to Comment 1, the mere assertion that emissions from a limited number of Kansas sources are projected to be lower than assumed by EPA in the preliminary Transport Rule modeling is not sufficient to demonstrate that this requirement is met.

Furthermore, statements about emission reductions from certain sources in a state do not inform the entire decision about the air quality impacts of sources in the State to a neighboring state. An analysis showing that source emissions are so low as to be insignificant might be some indication that a source could not reasonably be expected to contribute to downwind air quality problems. But

that is not the argument made by the commenter or by Kansas in its SIP submission. Kansas' SIP submission merely stated that four sources will reduce emissions of NO_x (32 percent total reduction) and SO_x (58 percent total reduction), below 2005 National Emissions Inventory levels, "in the coming years." However, there is no indication of the air quality impact of these anticipated reductions. Therefore, and for reasons also detailed in response to comment 1, the Kansas submission does not provide a demonstration that the SIP prohibits Kansas sources from significantly contributing to downwind nonattainment, or from interfering with maintenance of, the 2006 PM_{2.5} NAAQS.

5. **Comment:** The commenters argue that EPA failed to identify a statutory basis for reliance on preliminary modeling from an ongoing rulemaking (Transport Rule) to support disapproval. The commenters state that this reflects a failure to follow the path set out in the CAA section 110(c)(1). Commenters assert that the CAA authorizes the Administrator to impose a FIP only when a current SIP has been found lacking after promulgation of new rules and the State had not acted to cure the resulting deficiency. They stated that EPA "would have had to promulgate a proposed regulation first and give the State a chance to submit a substitute regulation." The commenters cite *Bethlehem Steel Corporation v. Gorsuch*, 742 F.2d 1028 (7th Cir. 1984) as their authority for these arguments.

EPA Response: EPA has described in detail above, particularly in response to comments 1 and 2, the basis for its reliance on the proposed Transport Rule modeling in this disapproval action. The statutory basis for EPA's disapproval action is (1) CAA section 110(a)(2)(D)(i)(I), which requires SIPs to address certain contributions to downwind nonattainment and maintenance, as discussed in response to previous comments, and (2) section 110(k)(1) and (2) which require disapproval of portions of plans which do not meet the requirements of the Act, within 1 year of a determination that a SIP submittal is complete. The requirements of section 110(a)(2)(D)(i)(I) are triggered upon promulgation or revision of a NAAQS (see section 110(a)(1) of the CAA). The requirement that the SIP must address this provision is imposed by the statute, not by promulgation by EPA of any separate rule (other than the rule promulgating or revising a NAAQS). Once EPA promulgated the 2006 revisions to the PM_{2.5} standards, all of the applicable requirements of section 110(a)(2) were triggered, including section

110(a)(2)(D)(i)(I). The Kansas submittal was in response to this specific statutory requirement. Because EPA is disapproving the SIP submittal (only as it relates to section 110(a)(2)(D)(i)(I)), EPA's obligation to promulgate a FIP is also triggered, upon disapproval of the SIP submittal, in whole or in part, as required by section 110(c)(1). CAA section 110(c)(1) authorizes EPA to promulgate a FIP "at any time within 2 years after" disapproving a SIP submission.

Commenters reliance on *Bethlehem Steel* is also misplaced. That case involved an EPA action approving a portion of a state's emissions regulation, but not approving another portion of the same regulation, thus rendering the regulation less stringent than the state intended. In rejecting EPA's approach, the Court stated: "No more can the EPA, in the guise of partial approval, remove words of limitation; it must follow the procedures that the Act prescribes for making state regulations stricter." (*Bethlehem Steel*, 742 F. 2d at 1036.) The procedures described by the Court for that purpose (*i.e.*, making a state regulation more stringent) are not applicable to the disapproval of the section 110(a)(2)(D)(i)(I) portion of the Kansas SIP submittal. EPA's action has no effect on any Kansas emissions control regulation, and no effect on the stringency of any state requirement. EPA's action merely follows the procedures of the CAA described above.

6. *Comment:* The commenters argue that the rationale for the proposed disapproval was inconsistent with the rationale for the proposed SIP call for Kansas (relating to interstate transport elements for the 1997 ozone NAAQS), in which EPA stated that it would not finalize the SIP Call if the final Transport Rule modeling does not show significant contribution to downwind nonattainment or interference with maintenance of the ozone standard. The commenter also asserts that this action "reversed the prior findings" that Kansas does not significantly contribute to nonattainment or interfere with maintenance in downwind areas.

EPA Response: The rationale for the proposed SIP Call is explained in detail in the proposed SIP call rule for Kansas (76 FR 763, January 6, 2011). That action involves a different ambient standard (1997 ozone as compared to 2006 PM_{2.5}), and different factual and legal considerations from those relating to this disapproval action. As explained in the proposed SIP Call, EPA had previously determined that Kansas sources did not significantly contribute to downwind nonattainment or interference with maintenance of the

1997 ozone standards (72 FR 10608). Because subsequent information (the proposed Transport Rule modeling) showed that the 2007 determination might be in error, EPA proposed the SIP Call, for the reasons stated in the proposal. However, a final determination of that issue can only be made after EPA finally determines, under the Transport Rule, whether Kansas sources do have downwind contribution to attainment or maintenance of the 1997 ozone standard.

In contrast, this disapproval of the section 110(a)(2)(D)(i)(I) portions of the Kansas 2006 PM_{2.5} SIP, contrary to assertions of the commenters, does not implicate any prior EPA determinations with respect to the specific NAAQS (2006 PM_{2.5}). Unlike the Kansas SIP for the 1997 ozone standard, EPA had not previously determined that the SIP is adequate with respect to the 2006 PM_{2.5} standard, to meet the requirements of section 110(a)(2)(D)(i)(I). As described in detail in responses to Comments 1 and 2, this disapproval action is based on the lack of a demonstration by Kansas that the SIP is adequate to meet the requirements of section 110(a)(2)(D)(i)(I). Unlike the Kansas SIP Call for 1997 ozone standard (76 FR 763), this determination is not dependent on the outcome of the final Transport Rule.⁵ The rationales for the proposed SIP Call and this action are not inconsistent, but merely address different matters, as discussed above.

7. *Comment:* The commenters argue that the proposed disapproval relating to the 2006 PM_{2.5} NAAQS is inconsistent with the approval of Kansas' demonstration of lack of contribution and noninterference with respect to the "1997 NAAQS." Commenters assert that the "same type of technical demonstration" was made for those NAAQS as for the 2006 PM_{2.5} NAAQS, and that EPA is being inconsistent in its treatment of the two submissions.

EPA Response: With respect to the reference to the technical demonstration for the 1997 NAAQS, it is not clear whether the commenter is referencing the demonstration for the ozone or PM_{2.5} standards, or both. With respect to ozone, Kansas made a detailed technical demonstration with respect to its downwind contribution for ozone, based on the information available at the time. The demonstration included emissions analyses, analyses of the proximity of Kansas sources to

downwind ozone air quality problems, and back-trajectory analyses. As explained in the proposed SIP Call for the 1997 ozone NAAQS referenced above, EPA has preliminarily determined that more recent analyses made in conjunction with the proposed Transport Rule, contradict the conclusions of noninterference with respect to the 1997 ozone NAAQS. This issue is outside the scope of this rulemaking, but notably, the demonstration provided by Kansas with respect to the 1997 ozone NAAQS contained far more information than the conclusory statements in the 2006 PM_{2.5} SIP submitted (discussed above particularly in the response to Comment (1) Which is the subject of this rulemaking).

With respect to the demonstration made by Kansas for the 1997 PM_{2.5} standards, we note that Kansas relied on the modeling performed for the Clean Air Interstate Rule, which, based on the information available at that time, showed that Kansas did not significantly contribute to downwind nonattainment or interfere with maintenance of the 1997 PM_{2.5} standard. This modeling did not consider and is not relevant to contributions with respect to the 2006 NAAQS, but for the 1997 PM_{2.5} NAAQS, it was adequate at the time to support a demonstration of noncontribution by Kansas.

For the reasons stated above, and as described further in response to Comment 1, we disagree with the commenters' generalized assertion that the State's documentation regarding contribution for the 1997 NAAQS was "the same type of technical demonstration" utilized for the 2006 PM_{2.5} NAAQS. As stated above, there was no technical demonstration with respect to the latter NAAQS.

III. Final Action

EPA is taking final action to disapprove a portion of the submission from the State of Kansas intended to demonstrate that Kansas has adequately addressed the elements of CAA section 110(a)(2)(D)(i)(I) that require the Kansas' SIP to include adequate provisions to prohibit air pollutant emissions from sources within the State from significantly contributing to nonattainment in or interference with maintenance of the 2006 24-hour PM_{2.5} NAAQS in any other state. EPA has determined that the Kansas submission does not contain adequate provisions to prohibit air pollutant emissions from within the State that significantly contribute to nonattainment in or interference with maintenance of the 2006 24-hour PM_{2.5} NAAQS in other

⁵ We reiterate, however, as stated in response to Comment 2, that the modeling for the final Transport Rule has now been completed.

downwind states. As noted in the Background above, the final modeling for EPA's Transport Rule indicates that Kansas in fact significantly contributes to downwind nonattainment in another state and interferes with maintenance of the 2006 24-hour PM_{2.5} NAAQS in another state.

Any remaining elements of the submittal, including language to address other CAA section 110(a)(2) elements, including section 110(a)(2)(D)(i)(II) regarding interference with measures required in the applicable SIP for another state designed to prevent significant deterioration of air quality and protect visibility, are not addressed in this action. EPA is disapproving only the provisions which relate to the section 110(a)(2)(D)(i)(I) portion of the submittal and intends to act on the remainder of the submittal in a subsequent action.

Also, under section 179(a) of the CAA, final disapproval of a submittal that addresses a requirement of a Part D Plan (42 U.S.C.A. 7501–7515), or is required in response to a finding of substantial inadequacy as described in section 7410(k)(5) (SIP Call), starts a sanctions clock. The provisions in the submittal that we are disapproving were not submitted to meet either of those requirements. Therefore, no sanctions are triggered.

The full or partial disapproval of a SIP revision triggers the requirement under section 110(c) that EPA promulgate a FIP no later than 2 years from the date of the disapproval unless the state corrects the deficiency, and the Administrator approves the plan or plan revision before the Administrator promulgates such FIP.

EPA's final Transport Rule and related FIP, if finalized in the manner proposed, may address these interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the State of Kansas for the 2006 24-hour PM_{2.5} NAAQS.

IV. Administrative Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to act on state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law.

Executive Order 12866, Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not

subject to review under the Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, because this SIP disapproval under section 110 of the CAA will not in-and-of itself create any new information collection burdens but simply disapproves certain state requirements for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This SIP disapproval under section 110 and of the CAA will not in-and-of itself create any new requirements but simply disapproves certain State requirements for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the CAA prescribes that various consequences (*e.g.*, higher offset requirements) may or will flow from this disapproval does not mean that EPA either can or must conduct a regulatory flexibility analysis for this action. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. EPA has determined that the disapproval action does not include a Federal mandate that may result in estimated costs of \$100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This action disapproves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government."

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action merely disapproves certain state requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Today's final disapproval does not have federalism implications. Thus, Executive Order 13132 does not apply to this action.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP EPA is disapproving would not apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive

Order 13175 does not apply to this action.

Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This SIP disapproval under section 110 will not in-and-of itself create any new regulations but simply disapproves certain state requirements for inclusion into the SIP.

Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through Office of Management and Budget, explanations when the Agency decides not to use available and applicable voluntary consensus standards. EPA believes that this action is not subject to requirements of section 12(d) of NTTAA because application of those requirements would be inconsistent with the CAA.

Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 Feb. 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs

Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this action. In reviewing SIP submissions, EPA’s role is to approve or disapprove state choices, based on the criteria of the CAA. Accordingly, this action merely disapproves certain state requirements for inclusion into the SIP under section 110 of the CAA and will not in-and-of itself create any new requirements. Accordingly, it does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898.

Congressional Review

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**.

A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Statutory Authority

The statutory authority for this action is provided by section 110 of the CAA, as amended (42 U.S.C. 7410).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

Dated: June 28, 2011.

Karl Brooks,

Regional Administrator, Region 7.

[FR Doc. 2011–17741 Filed 7–19–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0131, FRL–9317–9]

Approval and Promulgation of Air Quality Implementation Plans; State of California; Regional Haze State Implementation Plan and Interstate Transport Plan; Interference With Visibility Requirement

Correction

In rule document 2011–14479, appearing on pages 34608–34611, in the issue of June 14, 2011, make the following correction:

On page 34608, in the second column, in the Environmental Protection Agency document, the subject is corrected to appear as above.

[FR Doc. C1–2011–14479 Filed 7–19–11; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2011–0031; FRL–9440–7]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Prevention of Significant Deterioration; Greenhouse Gas Tailoring Rule Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the New Mexico Environment Department (NMED) to EPA on December 1, 2010. This SIP revision modifies New Mexico’s Prevention of Significant Deterioration (PSD) program to establish appropriate emission thresholds for determining which new stationary sources and modification projects become subject to New Mexico’s PSD permitting requirements for their greenhouse gas (GHG) emissions. EPA is fully approving New Mexico’s December 1, 2010, PSD SIP revision because the Agency has determined that this PSD SIP revision is in accordance with section 110 and part C of the Federal Clean Air Act and EPA regulations regarding PSD permitting for GHGs.

DATES: This final rule will be effective August 19, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2011–0031. All